



1. The plaintiff has admitted execution of affidavit Ex. D1 while appearing as PW1.
2. The plaintiff has admitted that the land comprised in rectangle No. 19 khasra No. 24 remained in possession of defendant since 1973 and defendant has constructed a room on the aforesaid portion.
3. On perusal of the judgment passed by the First Appellate Court, it appears that the First Appellate Court has just reiterated the trial Court's finding.
4. Neither the arguments of learned counsel representing the parties have been analyzed nor the evidence has been re-appreciated, which is expected from the First Appellate Court.
5. Hence, this Court is left with no choice but to re-appraise the evidence.
7. The respondent/defendant-Sh. Gurdeep Singh vide two sale deeds purchased a land measuring 32 kanals 11 marlas, detail whereof is as under:-

06.07.1971	06 kanals 18 marlas i.e. half share out of land measuring 13 kanals 16 marlas and 09 kanals out of land measuring 151 kanals 08 marlas i.e. purchased total land measuring 15 kanals 18 marlas.
05.11.1971	16 kanals 13 marlas from the land comprised in 151 kanals 08 marlas.

8. Thus, the total land purchased by Sh. Gurdeep Singh is 32 kanals 11 marlas. The appellant-Sh. Gurditta Ram vide registered sale deed dated



29.08.1972 purchased 15 kanals 18 marlas land. He purchased remaining half share of land measuring 13 kanals 16 marlas (which comes to 06 kanals 18 marlas) and 09 kanals out of land measuring 151 kanals 08 marlas. Respondent-Sh. Gurdeep Singh sold 04 plots out of share purchased in khewat having an area of 151 kanals 08 marlas. The details of the vendors as under:-

1. *Joginder Pal 19//25(0-7 ½)*
2. *Mukhtiar Kaur 19//25(0-7)*
3. *Balkar Singh 19//25(0-10)*
4. *Rajiv Kumar 20//21(0-13)"*

9. Thus, he was left with 24 kanals 15 marlas in the khewat of 151 kanals 08 marlas. On 07.12.1981, mutation No. 3658 evidencing partition of the property was sanctioned. 22 kanals 17½ marlas came to the share of Sh. Gurdeep Singh from land measuring in a khewat having area of 151 kanals 08 marlas. Similarly, 09 kanals land out of land comprised in rectangle No. 19 khasra No. 24 (8-0) rectangle No. 32 khasra No.4 (1-0) came to the share of Sh. Gurditta Ram. Sh. Gurditta Ram has sold some part of his land out of khewat having an area of 13 kanals 16 marlas but respondent-Sh. Gurdeep Singh did not sell his share from the said khewat. Hence, he continued to be the owner of 06 kanals 18 marlas out of 13 kanals 16 marlas. Vide Ex. P-6 and P-5, Sh. Gurdeep Singh and Sh. Gurditta Ram exchanged their properties. Sh. Gurditta Ram gave 06 kanals 18 marlas out of rectangle No. 19 khasra No. 24 (8-0), which he got by virtue of mutation No. 3654, on the basis of oral



partition, whereas, Sh. Gurdeep Singh gave the following land to Sh. Gurditta Ram:-

- "A. 01 kanal 15½ marlas out of total land 03 kanals 11 marlas to the extent of ½ share.
- B. 03 kanals 16½ marlas i.e. ½ share out of 07 kanals 13 marlas.
- C. 01 kanals 06 marlas out of land measuring 02 Kanals 13 Marlas i.e. 01 kanal 06 marlas."

10. It is evident that Sh. Gurditta Ram exchanged only 06 kanals 18 marlas land out of land comprised in rectangle No. 19 khasra No. 24 (8 kanals). Thus, he was left with 01 kanal 02 marlas in rectangle No. 19 khasra No. 24/1. Accordingly, mutation No. 3681 on 07.12.1981 was sanctioned reflecting that Sh. Gurdeep Singh is the owner of 06 kanals 18 marlas land out of rectangle No. 19 khasra No. 24/2, whereas, Sh. Gurditta Ram was reflected as the owner of 1 kanal 02 marlas in rectangle No. 19 khasra No. 24/1(12). The revenue authorities also prepared correction deed (*Tateema*) to this effect.

11. Out of 01 kanal 12 marlas, which is equivalent to 22 marlas comprised in rectangle No. 19 khasra No. 24/1, 09 marlas land was acquired by the industrial department and Sh. Gurditta Ram was paid the compensation in the year 1988. Thus, Sh. Gurditta Ram was left with 13 marlas land comprised in rectangle No. 19 khasra No. 24/1 (13 marlas). This is corroborated by mutation No. 5134. The plaintiff filed the suit claiming that Sh. Gurdeep Singh has encroached upon the aforesaid parcel of land. Both the Courts have erred in



relying upon affidavit dated 24.09.1981, Ex. D-1. It is evident that after 24.09.1981, there was subsequent exchange between the parties, which is evident by Ex. P-6 and Ex P7, which is corroborated by copies of *intikhab* prepared by the Revenue Authorities.

12. Both the Courts have also erred in observing that the plaintiff has admitted possession of the defendant from 1973. It is evident that the parties were co-owners/co-sharers in the joint property. Possession of defendant as a co-owner would be on behalf of the remaining co-owners. It is also evident that in December 1981, the land comprised in rectangle No. 19 khasra No. 24/1 remained with Sh. Gurditta Ram out of which only 09 marlas was acquired. Hence, remaining 13 marlas belongs to the plaintiff.

13. Keeping in view aforesaid discussion, the appeal is allowed. The judgments passed by the Courts below are set aside and the suit filed by the plaintiff for possession of 13 marlas land comprised in rectangle No. 19 khasra No. 24/1 is decreed. The plaintiff shall be entitled to take possession of 13 marlas land comprised in rectangle No. 19 khasra No. 24/1.

14. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

28.04.2025

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Whether speaking/reasoned : Yes No

Whether Reportable : Yes No